

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

Approved For Release 2002/05/09 : CIA-RDP86-00895R000100140009-0

23 December 1976

MEMORANDUM FOR: Managers of Records Systems

STATINTL FROM : [REDACTED]
Chief, Information and Privacy Staff
SUBJECT : Additions, Deletions, and Alterations of
Records Systems: Notification Requirements
REFERENCE : Public Law 93-579, 5 U.S.C. 552a, Subsection
(e)(4) (A through I), (e)(11), and (o)

1. The above referenced provisions require an agency that maintains a system of records to publish in the Federal Register, at least annually, a notice of the existence and character of their system of records. Also, the Congress and the Office of Management and Budget require notification of systems' changes.

2. The last complete survey was conducted during mid-1975. Also, since there have been recent indications that a few offices are planning changes in their systems, we are initiating a new comprehensive survey covering all records systems.

3. Although not limited to these, suggested areas of change could encompass a system's name, manager's title, access control, storage, retention, retrievability, disposal, categories of records and individuals in the system, and most importantly, changes regarding the routine use of a system to include the categories of users and the purpose of each use.

4. We, therefore, are requesting managers to review their respective systems for possible changes and updating. Please forward any changes to IPS by 14 January 1977 for inclusion in the Federal Register. Negative or no change reports are not necessary.



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Next 1 Page(s) In Document Exempt

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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title I—General Provisions

CHAPTER I—ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

PART 18—PREPARATION AND TRANSMITTAL OF DOCUMENTS GENERALLY

Clarity of Rulemaking Documents in the Federal Register

AGENCY: Administrative Committee of the FEDERAL REGISTER.

ACTION: Final rule.

SUMMARY: This rule prescribes format requirements for the preamble that accompanies the regulatory text of a proposed or final rulemaking document. These requirements are intended to improve the clarity of documents published in the FEDERAL REGISTER since the present preamble requirement has not resulted in clear, simple explanations of rulemaking documents.

Effective Date: April 1, 1977.

For Further Information Contact:

Martha Girard, Special Projects Unit, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, DC 20408. (202-523-6246).

Supplementary Information: On August 5, 1976, the Administrative Committee of the FEDERAL REGISTER published a proposed rule (41 FR 32861) to revise the present preamble requirements for certain FEDERAL REGISTER documents (1 CFR 18.12). As the Committee stated at that time, the present requirement was adopted in 1972 to introduce some uniform compliance with the public information function of the FEDERAL REGISTER and to make the information published easier to understand. The primary purpose of the proposed change was to improve the public notice giving function of the FEDERAL REGISTER.

Virtually all of the 46 comments received in response to the proposed changes were favorable. Several commenters, while agreeing in principle with the proposal, raised questions or made suggestions that convinced the Committee that a number of changes from the proposed rule are warranted.

DISCUSSION OF MAJOR COMMENTS

WHAT SHALL WE NAME IT?

The Committee received a wide variety of suggested names for what has traditionally (at least in the legal community) been called the preamble. After considering all of the comments and suggestions, the Committee has concluded there is not sufficient agreement on any one name to justify "registering" a new name. Therefore, the Committee intends to continue to use the term preamble.

SHOULD THE RULE APPLY TO ALL FEDERAL REGISTER DOCUMENTS?

The Committee's proposed revision of § 18.12 contained mandatory requirements for the opening part of each FEDERAL REGISTER document. After considering the comments received, the Committee has concluded that these requirements should not apply to documents published in the Notices Section of the FEDERAL REGISTER at this time. This will permit agencies to concentrate their initial efforts on proposed and final rule documents which in general have more legal significance and public impact. It will also permit the Office of the Federal Register to evaluate the effectiveness of the new format requirements in actual use and to determine whether the same format should apply to notice documents.

Another commenter suggested that the § 18.12 requirements should be strictly advisory and not mandatory. The Committee does not agree. The public notice giving function of the FEDERAL REGISTER requires, at a minimum, that each rulemaking document be intelligible. For the public to use the FEDERAL REGISTER, for the staff of the Office of the Federal Register to perform its indexing function, it is essential that each rulemaking document contain an adequate preamble.

Additionally, it was suggested that the agencies be permitted some latitude as to preamble format. The Committee considers that adequate flexibility exists to accommodate agency needs under the "Supplementary Information" section.

The Committee believes that it is important to provide relative consistency within the first six items of the preamble. This will aid FEDERAL REGISTER users and will also make practical the proposed Weekly Digest, which is currently in the planning stage. (See GSA Consumer Representation Plan, 41 FR 42862, September 28, 1976).

HOW MUCH DETAIL IS REQUIRED?

Two comments were received concerning the need for paragraph (d), which proposed to require the issuing agency to make a determination of the need for additional information in the public interest of the type described in paragraph (c). The requirement for the agency to make a determination of a need for additional detailed information has been incorporated into paragraph (c), and paragraph (d) has been dropped. In addition, paragraph (c) has been rewritten to make it clear that it is up to the issuing agency to determine how much information must be supplied to satisfy both the legal and public information requirements of FEDERAL REGISTER publication.

The Committee does not feel that the requirement for detailed background information should be mandatory for all documents. There are a significant number of simple and routine documents which do not require detailed information to fully inform the public of the agency action. The issuing agency is best qualified to identify the audience being addressed and to assure that each document communicates its intended message to that audience.

BURDEN

Several commenters requested clarification of the term "burden." One commenter suggested that paragraphs (c), (4) and (5) be revised "to incorporate a statement of consumer burden." Another commenter suggested that paragraphs (c), (4) and (5) be revised and placed under the requirements of paragraph (b) so as to make them mandatory. Finally, one commenter suggested that the requirements should "be specific as to costs citing a dollar amount."

The Committee has reconsidered the issue and has decided not to list "burden" as a separate requirement in paragraph (b). To some extent this is already covered by Executive Order 11821 (39 FR 41501) which requires the evaluation of inflationary impact for all rulemaking documents. Furthermore, if burden (economic or other) is a significant issue, then an agency should discuss it under the general requirements of paragraph (c).

IMPACT STATEMENTS

Two commenters requested that the appropriate impact statements be included in the introductory summary. Two commenters requested clarification of the term "appropriate impact statements." Upon further consideration, the Committee has decided to delete reference to impact statements as a separate requirement. It is anticipated that the responsible agencies will continue to include references to appropriate impact statements (environmental, economic, etc.) in documents where impact is a significant issue for public consideration.

WHY SUCH SIMPLE LANGUAGE?

One Federal agency stated:

The proposed approach is too broad in that it reduces everything for lay public consumption. For instance, what about technical matters designed for specific group consumption only, such as capitation grants for schools of nursing?

The Committee acknowledges that many problems addressed by Federal agencies are extremely complex and technical and therefore some regulations are necessarily complex and technical.

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RULES AND REGULATIONS

However, the Committee is of the opinion that the need for, and intended effect of, even the most complex and technical regulation can be explained in words that can be understood by a person who is not an expert in the subject matter. Therefore, the Committee does not agree that the requirement of § 18.12 is too broad.

MUST WE REPLY TO EVERY COMMENT?

One commenter pointed out that:

"Our experience has been that proposed regulations which have controversial aspects will generally inspire a flood of comment letters, some of which will contain helpful and constructive suggestions or will make cogent points. Occasionally, however, some of these letters are merely vituperative in nature, or discuss points that are wholly irrelevant to the subject matter of the proposed regulation or are based on a grossly mistaken reading of the substance of a proposed regulation. It is clearly wasteful of time and energy to respond to all such comments in the FEDERAL REGISTER."

The Committee agrees that it is neither useful nor necessary to respond to comments which are merely vituperative. Nor is it necessary to address individually each comment received. Furthermore, in this document the Committee has attempted to address all of the significant comments received, those that resulted in changes in the rule and those that were rejected as well. In some cases several commenters addressed the same issue and these were lumped together as an "issue" discussion. The Committee also noted those comments which were beyond the scope of the proposed rule. It also noted that where those comments were directed toward improvement of the FEDERAL REGISTER that they would be considered by the Office of the Federal Register in the future.

In response to the comments the Committee has inserted the word "substantive" before "public comments" in paragraph (c).

WHO CAN I CALL TO FIND ABOUT A DOCUMENT?

Several commenters requested that the names of agency contact persons, including phone numbers, be included with the explanatory material.

In his September 27, 1976 Memorandum for the Heads of Executive Departments and Agencies, the President stated:

"In recognition of the need for consumers to have direct access to appropriate Federal officials, each department and agency publishing in the FEDERAL REGISTER a rule making, regulation, guideline or other policy matter shall provide in a manner and format determined by the General Services Administration the name, address, and telephone number of the appropriate person responsible for responding to citizens inquiry or comment."

(41 FR 42764, September 28, 1976)

Therefore, the Committee has added a requirement for identification of a contact person.

DELAY OF EFFECTIVE DATE

Several commenters suggested a delayed effective date to facilitate compliance by those agencies likely to be caught with a considerable number of documents already in process. The Committee concurs and is delaying the effective date to accommodate those concerns. However, agencies are strongly urged to begin using the new format as soon as possible. The staff of the Office of the Federal Register will assist agencies to ensure a smooth transition.

HIGHLIGHTS

Highlights will still appear on the cover of the FEDERAL REGISTER, contrary to the impression of several commenters. The new format requirements will provide the necessary information for the Office of the Federal Register staff to write meaningful highlight statements. Thus, the revocation of § 18.16 shifts the responsibility for preparation of the highlight from the issuing agency to the Office of the Federal Register staff. Certain classes of documents of a nonsubstantive nature will continue to be exempted from the highlights.

COMMENTS ON MISCELLANEOUS COMMENTS

The Committee does not agree that the proposed rule would be improved as suggested by some commenters and has rejected the following suggestions:

(1) That the Office of the Federal Register must concur in an agency determination that further discussion under paragraph (c) is not required. This decision should be made by the issuing agency.

(2) That interpretive rules and procedural rules be exempted from § 18.12. These categories of rules can have as much public significance as legislative rules.

(3) That a summary of internal agency debate be required in controversial cases. An agency discussion of the important issues in a rulemaking proceeding will normally be adequate to inform the public. Ventilation of internal agency debate is a decision that each agency must and should make for itself.

(4) That a disclaimer clause be included to state that the preamble is merely a reader aid and has no legal effect. Section 5.1(c) of the Committee's regulations states:

In prescribing regulations governing headings, preambles, effective dates, authority citations, and similar matters of form, the Administrative Committee does not intend to affect the validity of any document that is filed and published under law.

The Committee does not believe that a stronger disclaimer statement would be of any value. Rather, normal rules of construction would apply. That is, the courts would follow the language of a regulation as long as it is clear and would look to materials, not included in the verbiage, such as the preamble statement, only to clarify ambiguity.

(5) That a "legal authorities statement" be added to the preamble requirements. Such a requirement would merely create a redundancy since it is already required with the regulatory text.

One commenter suggested that all regulations be reprinted, incorporating all intervening changes, at periodic intervals. This is presently being accomplished on an annual basis through the Code of Federal Regulations (CFR). All of the codified regulations are contained within its 50 titles which are updated and published annually. Full sets or individual volumes of the CFR are available through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

COMMENTS BEYOND SCOPE

A number of comments were received that were beyond the scope of the notice. They included:

(1) Require minimum comment period of 60 days;

(2) Eliminate emergency regulations;

(3) Impose personal responsibilities upon Government employees for the regulations and programs they propose;

(4) Group all documents in the daily FEDERAL REGISTER by agency;

(5) Request the Office of Management and Budget and the General Accounting Office to prepare for publication in the FEDERAL REGISTER proposed new report forms with instructions and justification statements;

(6) Increase the size of FEDERAL REGISTRY print;

(7) Require, where proposed regulations have been substantially changed, agencies to resubmit the revised proposal rules for notice and comment;

(8) Require a standardized format for regulations; and

(9) Footnote legal citations and explain at the bottom of the page.

In addition to being beyond the scope of the proposed rule hereunder consideration, many of the above suggestions are beyond the authority of the Committee. The FEDERAL REGISTER is continually under review for potential improvement and all comments aimed in that direction will be considered by the Office of the Federal Register in its future efforts.

Accordingly, 1 CFR Part 18 is amended as follows:

1. By revising § 18.12 to read as follows:
§ 18.12 Preamble requirements.

(a) Each agency submitting a proposed or final rule document for publication shall prepare a preamble which will inform the reader, who is not an expert in the subject area, of the basis and purpose for the rule or proposal.

(b) The preamble shall be in the following format and contain the following information:

Agency: _____ (Name of issuing agency)
Action: _____ (Notice of Intent), (Advance Notice of Proposed Rulemaking), (Proposed Rule), (Final Rule), (Other).

RULES AND REGULATIONS

Summary:

(Brief statements, in simple language, of: (i) the action being taken; (ii) the circumstances which created the need for the action; and (iii) the intended effect of the action.)

Dates:

(Comments must be received on or before: _____) (Proposed effective date: _____) (Effective date: _____) (Hearing: _____) Other: _____)

Addresses:

(Any relevant addresses.)

For further information contact: _____

(For Executive departments and agencies, the name and telephone number of a person in the agency to contact for additional information about this document [Presidential Memorandum, 41 FR 42762, September 23, 1976].)

Supplementary Information:

(As required by the provisions of paragraph (c) of this section.)

(c) When the issuing agency determines that the information provided under paragraph (b) of this section is inadequate as a matter of law, or is insufficient to adequately inform a reader who is not an expert in the subject area, or that a report of additional information is in the public interest, the agency shall include in the preamble the following information, as applicable:

(1) A discussion of the background, purpose and issues involved;

(2) In the case of a final rule, any significant differences between it and the proposed rule;

(3) A response to substantive public comments received; and

(4) Any other information the agency considers appropriate.

§ 13.16 [Reserved]

2. By revoking and reserving § 13.16.

(44 U.S.C. 1506; sec. 6, E.O. 10530, 19 FR 2702; 3 CFR 1954-1958, Comp., p. 189.)

JAMES E. RHOADS,
Chairman,
THOMAS F. McCORMICK,
Member,
MARY O. EASTWOOD,
Member.

Approved:

EDWARD H. LEVI,
Attorney General,
JACOB ECKERD,
Administrator of General
Services.

[FR Doc. 76-38173 Filed 12-28-76; 8:45 am]

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Navel Orange Reg. 392, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period. Dated:

ber 17-23, 1976. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) **Findings.** (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 392 (41 FR 54918). The existing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges available to meet such increased demand, the regulation should be amended, as hereininafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication thereof in the FEDERAL REGISTER (5 U.S.C. 553). Because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of Navel oranges grown in Arizona and designated part of California.

(b) **Order, as amended.** The provisions in paragraph (b) (1) (i), (ii), and (iii) of § 907.692 (Navel Orange Regulation 392) (41 FR 54918) are hereby amended to read as follows:

- (i) District 1: 788,000 cartons;
- (ii) District 2: 55,000 cartons; and
- (iii) District 3: 107,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Dated: December 22, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 76-38142 Filed 12-23-76; 8:45 am]

PART 912—GRAPEFRUIT GROWN IN THE INDIAN RIVER DISTRICT IN FLORIDA

Expenses and Rate of Assessment

This document authorizes expenses of \$27,000 for the Indian River Grapefruit Committee, under Marketing Order 912, for the 1976-77 fiscal period and fixes a rate of assessment of \$0.002 per box (\$0.001 per four-fifths bushel) of grapefruit handled in such period to be paid to the committee by each handler as his pro rata share of such expenses.

On December 3, 1976, notice of rulemaking was published in the FEDERAL REGISTER (41 FR 53035) inviting written comments not later than December 21, 1976, regarding proposed expenses and the related rate of assessment for the period August 1, 1976, through July 31, 1977, pursuant to the marketing agreement, as amended, and order No. 912, as amended (7 CFR Part 912), regulating the handling of grapefruit grown in the Indian River District in Florida. None were received. This regulatory program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). After consideration of all relevant matters presented, including the proposals set forth in such notice which were submitted by the Indian River Grapefruit Committee (as published pursuant to said marketing agreement and order), it is hereby found and determined that:

§ 912.216 Expenses and rate of assessment.

(a) **Expenses.** Expenses that are reasonable and likely to be incurred by the Indian River Grapefruit Committee during the period August 1, 1976, through July 31, 1977, will amount to \$27,000.

(b) **Rate of assessment.** The rate of assessment for said period payable by each handler in accordance with § 912.41, is fixed at \$0.002 per standard packed box (\$0.001 per four-fifths of a United States bushel) of grapefruit, whether in bulk or in any container.

It is hereby further found that good cause exists for not postponing the effective date hereof until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that (1) shipments of grapefruit are now being made; (2) the relevant provisions of said marketing agreement and this part require that the rate of assessment herein fixed shall be applicable to all assessable grapefruit handled during the aforesaid period, and (3) such period began on August 1, 1976, and said rate of assessment will automatically apply to all such grapefruit beginning with such date.

(Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).)

Dated: December 22, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 76-38142 Filed 12-23-76; 8:45 am]